

- (1) Whether claimant sustained personal injury by accident on the dates alleged.
- (2) Whether claimant's alleged injuries arose out of and in the course of his employment with the respondent.
- (3) Whether timely written claim was made.
- (4) Whether claimant is entitled to vocational rehabilitation benefits.
- (5) Whether claimant is entitled to unauthorized medical allowance.

In Docket No. 140,905

The issues are:

- (1) Whether the alleged accidental injury arose out of and in the course of claimant's employment with respondent.
- (2) Claimant's average weekly wage.
- (3) Whether claimant is entitled to unauthorized medical allowance.
- (4) Whether claimant is entitled to future medical benefits.

Certain of the issues which were decided by the Administrative Law Judge, including nature and extent of disability, were not raised by either of the parties on appeal. Accordingly, the Appeals Board adopts and affirms the findings and conclusions of the Administrative Law Judge with regard to those issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and considered the briefs and arguments of the parties, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed in both docketed claims.

The findings of fact and conclusions of law, as enumerated in the Award by the Administrative Law Judge, are found to be accurate and appropriate and are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board specifically finds that claimant has failed to sustain his burden of proving that the disputed right-shoulder and right-elbow injury in Docket No. 140,904 arose out of and in the course of claimant's employment with respondent. In addition, in Docket No. 140,905 the Appeals Board finds that the alleged right-knee injury did not arise out of and in the course of claimant's employment with respondent on the date alleged. Claimant did suffer an accident on June 28, 1989, which resulted in a temporary sprain injury to his left knee. Claimant received medical treatment for that injury and the condition resolved without permanent impairment. It was almost a year later, on May 11, 1990, before claimant presented right-knee complaints to Dr. Fred M. Wood which claimant attributed to the

June 28, 1989, accident at work. However, claimant admitted in his testimony that only one knee was injured in that accident. As did the Administrative Law Judge, the Appeals Board finds from the many inconsistencies in claimant's testimony, particularly as compared to the medical records, that claimant is not a credible witness. The Appeals Board concurs with the findings by the Administrative Law Judge that claimant did not meet his burden of proving that his injuries were work related.

AWARDS

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Alvin E. Witwer dated November 8, 1994, in Docket No. 140,904 should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Alvin E. Witwer dated November 8, 1994, in Docket No. 140,905 should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of October 1996

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Lawless, Overland Park, KS
David M. Druten, Lenexa, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director